

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Coles-Moultrie Electric Cooperative, :
 :
 Complainant :
 :
 vs. : ESA 195
 :
 Central Illinois Public :
 Service Company, :
 :
 Respondent. :
 :
 Complaint under Electric Supplier Act. :

O R D E R

By the Commission:

On November 5, 1979, Coles-Moultrie Electric Cooperative ("Complainant" or "Coles-Moultrie") filed a verified complaint pursuant to Section 7 of the Electric Supplier Act ("Act") with the Illinois Commerce Commission ("Commission") alleging it was entitled to provide electric service for a certain oil pumping installation of Warren Petroleum Company ("Warren Petroleum") under the provisions of Section 8 of the Electric Supplier Act ("Act"). On November 16, 1979, Central Illinois Public Service Company ("Respondent" or "CIPS") filed its verified answer denying Complainant is entitled to provide the said service and stating CIPS should continue to provide the electric service to Warren Petroleum under the provisions of Section 5(a) of the Act.

Pursuant to notice as required by the rules and regulations of the Commission, this cause came on for hearing before a duly authorized Hearing Examiner of this Commission at its offices in Springfield, Illinois on February 19, April 22 and May 9, 1980. At the latter hearing the cause was marked "Heard and Taken." Coles-Moultrie and CIPS were represented by counsel who presented evidence, both oral and documentary, in support of their respective positions. A member of Commission Staff, also, actively participated. Coles-Moultrie filed its brief on May 30, 1980, and CIPS filed its brief on July 3, 1980; a reply brief was filed by Coles-Moultrie on July 9, 1980.

The Warren Petroleum pumping facility is located on the east 20 acres of the Honn property under a lease arrangement with Arthur Honn. The property is located in Section 32, Township 12 North, Range 14 West of Third Principal Meridian, Clark County, Illinois and consists of 120 acres in a rectangular shape running in an east-west direction. Directly north of and adjoining the Honn property is the Village of Westfield. CIPS is and has provided electric service to the Village since 1913. Respondent has also provided electric service to the Honn residence located in the northwest corner of the said property since 1934 and is continuing to do so. Coles-Moultrie has provided electric service to 6 customers across the road from the west side of the Honn property since 1947. There are no near electric service facilities on either the south or east side of the Honn property except for CIPS' 69 KV line which runs on the Honn side of Illinois Route 49. Route 49 runs in a north south direction along the east line of the Honn property. Arthur Honn acquired the west 100 acres of said property in September, 1964 and the east 20 acres, the location in controversy, in November, 1965. The effective date of the Act is July 2, 1965.

Warren Petroleum first applied for electric service to Coles-Moultrie. Coles-Moultrie determined that the straight line distance from its closest facility in existence on July 2, 1965 to the proposed Warren Petroleum metering point was 2,048 feet compared to a straight line distance of 2,003 feet to CIPS' closest facility in existence on July 2, 1965. In that the shorter distance was with CIPS, Coles-Moultrie, the Complainant, sent a letter to CIPS on May 17, 1978 advising CIPS that its facilities were closer to Warren Petroleum than that of Coles-Moultrie and that CIPS should contact Warren Petroleum to arrange electric service with CIPS. Approximately two weeks later Warren Petroleum received its electric service from CIPS.

On November 5, 1979, Coles-Moultrie filed the instant complaint against CIPS alleging Respondent did not supply the electric service from the shortest route of 2,003 feet in length to Warren Petroleum but, rather, chose to construct a 12.5 KV underbuild line on the existing CIPS 69 KV line 3,374 feet from a point on the edge of the Village of Westfield, then south along Route 49, then 510 feet west (underground) to the Warren facility, making a total of 3,884 feet from the CIPS' system in existence in July 2, 1965. Coles-Moultrie claims it was not notified by CIPS that it intended to provide electric service by other than the shortest route and that Coles-Moultrie is entitled to provide the service under Section 8 of the Act.

The shortest straight line route for CIPS from its facilities as of July 2, 1965 is from the Honn residence in the northwest corner of the Honn property to the Warren Petroleum injection well facility. This is 2,003 feet in length and the line would be extended by means of an overhead structure which would pass within 20 feet of the Honn residence and also traverse some cultivated land. The cost of this construction to CIPS was estimated at \$3,829. The shortest route for Coles-Moultrie is in a straight line from the southwest corner of the Honn property with a distance of 2,048 feet, that is, 45 feet longer than the CIPS line. Coles-Moultrie did not estimate the cost of construction. Instead, it proposes to extend an overhead structure along the south line of the Honn property eastwardly approximately 2,230 feet with the last 460 feet being underground across cultivated acreage to the Warren Petroleum facility at an estimated cost of \$4,850.

When a complaint is filed under Section 7 of the Electric Supplier Act, it is necessary for the Commission to first determine the applicability of Section 6. Section 6 concerns contracts between electric suppliers which define and delineate service areas. Such contracts are subject to the approval of the Commission. From evidence adduced, there is no contract between the companies for the area in question. Section 6 is not applicable.

Next, Section 5 must be considered. Respondent asserts Section 5(a) is applicable. Section 5(a) of the Act is as follows:

Sec. 5. Each Electric Supplier is entitled, except as otherwise provided in this Act or (in the case of public utilities) the Public Utilities Act, to (a) furnish service to customers at locations which it is serving on the effective date of this Act, . . .

Respondent takes the position that it was serving the Honn property on July 2, 1965 and that the Warren Petroleum facility is located on the Honn property under a lease from Honn. However, Respondent does not take into account that Honn did not acquire the 20 acre tract involved until after

the effective date of July 2, 1965. Such being the case, the 20 acres of the Warren Petroleum facility was not a part of the location or premises as of July 2, 1965 and Section 5(a) cannot be considered applicable to the situation at hand. The parties agree that the other portions of Section 5 of the Act are not applicable.

The Act provides that if Sections 5 and 6 are not applicable, then the controversy must be resolved on the basis of Section 8. The pertinent part of Section 8 of the Act is as follows:

When a complaint has been filed as provided in Section 7, the Commission shall proceed, after reasonable notice to the suppliers concerned, to a hearing to determine which of the suppliers is entitled or should be permitted under this Act to furnish the proposed service. . . .

In making this determination, the Commission shall act in the public interest and shall give substantial weight of the consideration as to which supplier had existing lines in proximity to the premises proposed to be served, provided such lines are adequate. In addition, the Commission may consider, but with lesser weight, (a) the customer's preference as to which supplier should furnish the proposed service, (b) which supplier was first furnishing service in the area, (c) the extent to which each supplier assisted in creating the demand for the proposed service, and (d) which supplier can furnish the proposed service with the smaller amount of additional investment. The Commission, however, shall give no weight or consideration to the fact that any supplier has or has not been issued a certificate of public convenience and necessity in the area proposed to be served.

As stated in Section 8, substantial weight must be given as to which supplier had existing lines in proximity to the premises proposed to be served. Proximity is defined in Section 3.13 as:

"Proximity" means that distance which is shortest between a proposed normal service connection point and a point on an electric supplier's line, which is determined in accordance with accepted engineering practices by the shortest direct route between such points which is practicable to provide the proposed service.

As stated earlier, Coles-Moultrie by their own measurements determined that the straight line distance favored CIPS. In fact, Coles-Moultrie so notified Respondent by letter dated May 17, 1978 that it was up to CIPS to furnish the electricity to Warren Petroleum. CIPS responded to the letter by consulting with Warren Petroleum and by installing and furnishing electricity to the Warren Petroleum site by June 1, 1981. The letter from Coles-Moultrie to CIPS conceded the proximity of CIPS' electric facilities to the proposed meter location to serve the Warren Petroleum injection well site. The letter attached no conditions as to which route was to be taken or how it was to be done.

From evidence adduced, CIPS decided not to use the shortest and most direct route but, rather, to construct a 12.5 KV underbuild line on the existing 69 KV pole line.

This extends 3,374 feet from the Village of Westfield along Route 49 and then 510 feet west (underground) to the Warren Petroleum facility. The evidence disclosed that due to the fact Respondent could use the poles of the existing 69 KV line, the estimated cost of the extension would be \$3,745 as compared to \$3,829 for the shorter, straight line overhead route. Also, the extension has the further benefit of avoiding the building of an overhead line over cultivated land and which would pass within approximately 20 feet of the Arthur Honn house. Some sixteen months after CIPS commenced supplying electricity to Warren Petroleum Coles-Moultrie filed its complaint stating it thought CIPS would use the shortest route and that CIPS did not notify Coles-Moultrie that the longer route would be used. Also, that it should not be allowed to provide the electric to the Warren Petroleum facility in that it is closer in proximity to the said facility.

After review of the evidence, the Commission observes that to implement the most direct line method of supplying electricity to the Warren Petroleum facility, it would be necessary for either of the suppliers to construct an overhead line over the 120 acre Honn property with part of this extension being over cultivated acreage. This method would place CIPS in closer proximity, as Coles-Moultrie acknowledged in its letter to CIPS, and there is nothing in the evidence precluding the use of an overhead extension.

However, Coles-Moultrie does not intend to use the shortest route but, instead, proposes to extend its line by means of an overhead structure along the south line of the Honn property and then angle in a northeasterly direction by means of an underground extension across the cultivated land of the Honn property to supply the electricity at the Warren Petroleum site. The cost thereof was estimated at \$4,850 and no estimate was made for the closer, direct route by Coles-Moultrie.

CIPS, on the other hand, chose to extend its line along Route 49 on its existing 69 KV line poles to a point immediately east of the Warren Petroleum site and then directly west by means of an underground extension to the required service point. By this method, no new or additional poles are required and the cost is reduced from \$3,829 for the overhead direct route to \$3,745. Of course, CIPS also has the third option of following a similar course of action to that proposed by Coles-Moultrie by the use of an overhead structure along the north line of the Honn property and then angling southeastwardly by means of an underground extension to the proposed site. This, also, would be more costly, in addition to other deficiencies.

The method of extension used by CIPS eliminates the requirement for additional poles, causes the least obstruction and interference to the Honn property, is adequate to supply the necessary service, requires the least capital investment, and is the most practicable.

The Commission further recognizes that CIPS continues to be entitled to furnish electric service on the west 100 acres of the Honn tract which constitutes the location or premises that was served by CIPS on July 2, 1965. Should Coles-Moultrie prevail in its complaint herein and provide electric service to Warren Petroleum, it would then extend its line through CIPS' premises, as defined by the Act. Further, should electric service be required on the eastern portion of the Honn 100 acre premises served by CIPS on July 2, 1965, there could be a duplication of facilities.

The existing lines of CIPS as of July 2, 1965 is in closer proximity to the premises to be served than that of Coles-Moultrie. The alternative route of service used by

CIPS is more practicable in that it does not require additional line poles, provides the least interference to land use, requires the least amount of additional investment and is least likely to result in a duplication of facilities in the future. The record shows no preference of customer as to which supplier should furnish the proposed service or that either supplier was instrumental in creating the demand for the service. CIPS was first to furnish service in the area. The Commission is of the opinion that public interest is best served through the use of CIPS' facilities as now implemented.

The Commission having considered all the evidence, both oral and documentary, presented in this proceeding and being fully advised in the premises, is of the opinion and finds that:

- (1) Coles-Moultrie Electric Cooperative is an Illinois general not-for-profit corporation, financed in whole or in part under the Federal "Rural Electrification Act of 1936", as amended, and is engaged in furnishing and distributing electric energy in Illinois, including Clark County, and in so doing is an electric supplier as defined by Section 3.5 of the Electric Supplier Act;
- (2) Central Illinois Public Service Company is an Illinois corporation engaged in the generation, transmission, distribution and sale of electric energy to the public in Illinois, including Clark County, and in so doing is a public utility within the meaning of "An Act concerning public utilities," as amended;
- (3) the Commission has jurisdiction of the parties and of the subject matter herein;
- (4) the statements of fact contained in the prefatory portion of this order are supported by the evidence and are hereby adopted as findings of fact;
- (5) Section 6 of the Act is inapplicable to this proceeding in that there is no contract between the parties defining and delineating the service area under consideration herein;
- (6) neither Coles-Moultrie nor CIPS is entitled to service the proposed location under Section 5 of the Act;
- (7) CIPS is entitled to continue to serve the Warren Petroleum facility pursuant to Section 8 of the Act;
- (8) no preference between electric suppliers has been shown by Warren Petroleum;
- (9) neither electric supplier assisted in creating a demand for the proposed service;
- (10) CIPS was first to furnish electric service in the area;
- (11) CIPS can furnish the proposed service with the smaller amount of capital investment;
- (12) the complaint of Coles-Moultrie should be dismissed;

- (13) all objections and motions made in this proceeding that remain undisposed of should be disposed of in a manner consistent with the conclusions contained herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Central Illinois Public Service Company be, and it hereby is, authorized to continue to provide electric service for the facilities of Warren Petroleum Company at the location described hereinabove pursuant to Section 8 of the Electric Supplier Act.

IT IS FURTHER ORDERED that the complaint of Coles-Moultrie Electric Cooperative be, and it hereby is, dismissed with prejudice.

IT IS FURTHER ORDERED that all objections and motions made in this proceeding which have not been hereinbefore disposed of shall be deemed and considered disposed of in a manner consistent with the ultimate conclusions herein contained.

By order of the Commission this 26th day of August, 1981.

Al. H. H.

Chairman

[Signature]

EXAMINER <i>RLL</i>
SECTION CHIEF
Supervisor of Order <i>[Signature]</i>